



**REQUEST FOR QUOTATION:**

**RFQ 22100**

**APPOINTMENT OF A SERVICE PROVIDER TO PROVIDE FORENSIC INVESTIGATOR  
CONSULTANT AT ITHALA SOC LIMITED HEAD OFFICE**

**CLOSING DATE AND TIME: TUESDAY, 19 SEPTEMBER 2023 @ 14H00**

Quotations to be submitted via email: **Quotes\_LTD@ithala.co.za**

**Procurement Enquiries**

Name : Mvelo Bekwa  
Telephone : 031 366 2615  
Email : [mbekwa@myithala.co.za](mailto:mbekwa@myithala.co.za)

**Name of service provider:** .....

## REQUEST FOR QUOTATIONS

### RFQ 22100: APPOINTMENT OF A SERVICE PROVIDER TO PROVIDE FORENSIC INVESTIGATOR CONSULTANT AT ITHALA SOC LIMITED HEAD OFFICE

Competent service providers are hereby invited to furnish written quotations for performing the above-mentioned service / supplying the above-mentioned goods.

The following conditions will apply:

- Price(s) quoted must be valid for at least sixty (60) days from date of your offer.
- Price(s) quoted must be firm.
- A firm delivery period must be indicated.

This RFQ will have a three-stage evaluation process, and they are as follows:

#### STAGE 1 - ADMINISTRATION COMPLIANCE

##### (a) Mandatory requirements

- The bidder must be registered as a vendor on the National Treasury Central Supply Database (CSD);
- The service provider must be in good standing with SARS and this information will be verified on central supplier database or on SARS e-filing;
- Completed Integrity declarations and there are no conflicts of interest which may impact on the tenderer's ability to perform the contract in the best interests of the employer;
- The proposing entities are bona fide entities, registered in accordance with the laws of SA;
- Or any of its directors/shareholders is not listed on the Register of Tender Defaulters in terms of the Prevention and Combating of Corrupt Activities Act of 2004 as a person prohibited from doing business with the public sector;
- Business profile
- Provide CV(s) of potential candidates that meet the requirements detailed in **B (4)**.
- Provide Forensic Investigation qualification.

##### (b) A quotation must be submitted with the following documents:

- A copy of valid BBBEE certificate or Sworn Affidavit
- Central Supplier Database (CSD) summary report

#### STAGE 2 – FUNCTIONALITY CRITERIA

- Responsive bids will be evaluated according to the criteria, weightings and threshold scores as indicated in section B.
- Failure to obtain the minimum of 70 points on functionality will result in disqualification from further evaluation.

#### STAGE 3 – PRICE AND SPECIFIC GOALS

**Bidders who meet all the requirements for stages one and two will be evaluated through the price and specific goals evaluation.**

This quotation will be evaluated in terms of the 80/20 preference point system as prescribed in the Preferential Procurement Policy Framework Act (No 5 of 2000) and its Preferential Regulations 2022. For the purpose of this tender a maximum points of 80 will be allocated for price and one of the following specific goals will be acceptable for the claiming of points, i.e. Black women ownership, Black youth ownership or disability ownership. A maximum of 20 points will be allocated for either one of the specific goals to be claimed.

More than 51% owned by Blacks as per the category on Table 1	20
Less than 51% owned by Blacks as per the category on Table 1	10
Zero ownership of the category indicated on Table 1	0

The onus is on the service provider to provide documentary proof of the claims in terms of the specific goals, failure to submit proof will result in non-allocation of points, thus regarded as not claiming.

No awards will be made to person(s)

- Who is not registered on the Central Supplier Database;
- Who is in the service of the state;
- If that person is not a natural person, of which any director, manager, principal shareholder or stakeholder is a person in the service of the state; and/or

The proposals may be submitted in sealed envelopes delivered at Ithala SOC Limited, **Ithala reception, 28 Somtseu Road, North Towers, Kingsmead Office Park, Durban, 4000** and should be deposited in the box located at the reception. Or via Email on [Quotes\\_Ltd@ithala.co.za](mailto:Quotes_Ltd@ithala.co.za) (quotes underscore LTD at Ithala dot co dot za), the **RFQ number and tender description** MUST be clearly indicated on the subject line of the email.

**It is the responsibility of each bidder when submitting by email to submit early and files can be submitted as parts in order to cater for the capacity of the email (9MB). A “we transfer” link is acceptable or any other form of electronic submission, provided the information email is sent before the closing time.**

All quotations must be submitted on or before **14:00 on Tuesday, 19 September 2023**. No quotations will be accepted after this date and time.

Ithala SOC reserves the right to withdraw any invitation to quote and/or to re-advertise or to reject any quotation or to accept a part of it. Ithala SOC does not bind itself to accepting the lowest quote or award a contract to the tenderer scoring the highest number of points.

Yours faithfully

#### **SUPPLY CHAIN MANAGEMENT**

SUPPLIER INFORMATION					
NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:		OR	CENTRAL SUPPLIER DATABASE No:	MAAA
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE	TICK APPLICABLE BOX]		B-BBEE STATUS LEVEL SWORN AFFIDAVIT		[TICK APPLICABLE BOX]
	<input type="checkbox"/> Yes	<input type="checkbox"/> No			<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES &amp; QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]</b>					
ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSURE PROOF]		ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?		<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES, ANSWER THE QUESTIONNAIRE BELOW]
QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS					
IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)? <input type="checkbox"/> YES <input type="checkbox"/> NO					
DOES THE ENTITY HAVE A BRANCH IN THE RSA? <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> NO					
DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA? <input type="checkbox"/> YES <input type="checkbox"/> NO					
DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA? <input type="checkbox"/> YES <input type="checkbox"/> NO					
IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION? <input type="checkbox"/> YES <input type="checkbox"/> NO					
<b>IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO REGISTER FOR A TAX COMPLIANCE STATUS SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 BELOW.</b>					

## **B. TERMS OF REFERENCE**

### **1. INTRODUCTION**

Ithala SOC Limited is a Schedule 3A National Public Entity in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999 as amended). In line with the Ithala Fraud Investigation Policy, the Internal Audit division has been tasked with the responsibility of securing the services of a professional service provider to conduct forensic investigations into the matters indicated below and also in line with the scope outlined in these terms of reference.

- Ithala seeks to appoint a recognized forensic firm to make available human resources for a forensic investigation at Ithala Head office in Durban.
- Only firms who are already registered on the Central Supplier Database (CSD) must submit their proposal.

### **2. SCOPE OF WORK**

- a. The successful service provider must deliver the following within the agreed upon period from the date of appointment:
  - Conduct a forensic investigation.
  - Apply IT skills and data analytics of large volumes of information to obtain evidence.
  - Identify process/internal control weaknesses.
  - Draft a report setting out procedures followed, findings and recommendations, and exhibits.
  - Assist in completing internal disciplinary charge sheets and supporting evidence; and
- b. Must be able to deliver on their obligation in respect of investigation services as required in terms of the scope.
- c. Must have the necessary capacity, skill, and experience to perform quality of work (Partner/Engagement Director should at least have an NQF 8 level qualification).
- d. Must have completed a Certified Fraud Exam by the Association of Certified Fraud Examiners (ACFE) and or certified as a Commercial Forensic Practitioner by the Institute Commercial Forensic Practitioners (ICFP) or any other relevant registration with a recognised Forensic Professional Body
- e. Must have a quick turn-around time in terms of project completion.
- f. Demonstrate the knowledge and understanding of the Regulatory Framework such as, but not limited to:
  - Public Finance Management Act (PFMA) and its Regulations Treasury Regulations, Public Services Procurement Policies, Labour Legislation, Criminal Procedures Act, Promotion of Access to Information Act, Protection of Personal Information (POPI) Act.

The Forensic Capacity, skills, and expertise of the bidder for the requirements of the bid must have details of the investigation team that will be involved in the assignment including number and level/ ranks of team member/s to be involved in the assignment, and the curriculum vitae for each team member.

The successful bidder shall ensure that the team presented to Ithala, is in line with the proposal submitted, and team members who exit the employment of the successful bidder, are substituted with team members with similar experience and qualifications.

### **3. TASK DIRECTIVE**

The functions to be performed by the service provider appointed regarding the Forensic Investigation will, amongst other things include the following:

- I. Conduct Preliminary Investigation into identified transactions/cases and determine investigation strategy or advise otherwise for reporting to the Senior Manager/Chief Audit Executive.
- II. Conduct Forensic Investigations as required by Ithala. The Investigation scope should amongst others cover the following:
  - Use IT skills to analyse data and establish trends relating to syndicates and collusion.
  - Determination if User profiles were compromised or misused by others,
  - Quantification of misappropriation.
  - Determine whether irregularities occurred with regards to transactions that will be reviewed.
  - Determine and identify officials at Ithala and, or other external parties involved in irregularities that occurred.
  - Determine control weaknesses and control breakdown that enabled fraud to occur.
  - Recommend appropriate course of action to be instituted by Ithala where irregularities have been confirmed.
- III. Draft a comprehensive report(s) to Ithala and Ithala's Audit Committee through the office of the Chief Audit Executive.
- IV. Assist in the development of charge sheets where disciplinary actions have recommended and lead evidence during the process.
- V. Lead evidence in criminal court if so required.
- VI. Attend planned meetings with the Chief Audit Executive and relevant Management at Ithala during the duration of the contract and subsequent to the period where relevant, i.e., leading evidence in disciplinary processes or court matters as relevant.

### **4. EVALUATION CRITERIA**

Minimum threshold on functionality is 70% to qualify for the next evaluation phase of price and specific goals.

#### **Experience**

Proof that the bidder has been in existence and in practice for a period of not less than five (5) years.

- 5 years- (10 points)
- 6-8 years- (15 points)
- 8 years - (20 points)

#### **Capacity**

Knowledge & expertise of the service provider demonstrate that the forwarded candidate meets the required knowledge and expert criteria of a Forensic Investigator.

NO.	FUNCTIONALITY	SCORES	MAXIMUM POINTS TO BE AWARDED
1.	<b>ORGANIZATION EXPERIENCE AND COMPETENCIES IN FORENSIC INVESTIGATION</b>		<b>20</b>
1.1	Description of the organisation's prior experience		
	More than eight years	20	
	Between five years and eight years	15	
	Less than five years	10	
2.	<b>CAPABILITY, EXPERIENCE AND EDUCATIONAL BACKGROUND OF THE FORWARDED CANDIDATE</b>		
2.1	Relevant Qualification		<b>20</b>
	Relevant Tertiary Qualification NQF8 Relevant Tertiary Qualification NQF7 Relevant Tertiary Qualification NQF6  Skills in Commence/Accounting/Auditing/Investigations/Forensic or other suitable qualification)  (Minimum qualification is undergraduate qualification).	20 15 10	
2.2	Professional Registration		<b>20</b>
	CFE or CFIP or any other relevant registration with a recognised Forensic Professional Body <b>essential</b> .	20	
2.3	Accounting, Financial investigations, Audit Skills		<b>20</b>
	5 years of professional experience in forensic investigation. 5 – 7 yrs. = 10 8 -10 = 15 >10 years = 20	20	
2.4	<b>References</b>		<b>20</b>
	Provide three (3) contactable relevant references of clients to whom the bidder has provided services similar to ones listed in the identified area of service.	20	
<b>TOTAL SCORING</b>			<b>100</b>
<b>Bidders are required to score a minimum of 70 points in order to move to stages three (3)</b>			

**C. PRICING SCHEDULE**

ITEM NO.	DESCRIPTION	NO. OF HOURS	RATES/HOUR	TOTAL
1	Forensic Investigator	200	R	R
2			R	R
3			R	R
4			R	R
			R	R
			R	R
<b>SUB TOTAL (EXCL. VAT)</b>				R
<b>VAT @15%</b>				R
<b>TOTAL (INCL. VAT)</b>				R

NAME OF BIDDER: \_\_\_\_\_

SIGNATURE OF BIDDER: \_\_\_\_\_

DATE: \_\_\_\_\_

## D. INTEGRITY DECLARATION

## 1. PURPOSE OF THE FORM

Any person (natural or juristic) may make an offer or offers in terms of this invitation to quote. In line with the principles of transparency, accountability, impartiality, and ethics as enshrined in the Constitution of the Republic of South Africa and further expressed in various pieces of legislation, it is required for the tenderer to make this declaration in respect of the details required hereunder.

Where a person/s are listed in the Register for Tender Defaulters and / or the List of Restricted Suppliers, that person will automatically be disqualified from the quotation process.

## 2. Tenderer's declaration

2.1 Is the tenderer, or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest<sup>1</sup> in the enterprise, employed by the state?

<b>YES</b>	<b>NO</b>
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2.1.1 If so, furnish particulars of the names, individual identity numbers, and, if applicable, state employee numbers of sole proprietor/ directors / trustees / shareholders / members/ partners or any person having a controlling interest in the enterprise, in table below.

2.2 Do you, or any person connected with the bidder, have a relationship with any person who is employed by Ithala SOC (Ltd)?

<b>YES</b>	<b>NO</b>
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### 2.2.1 If so, furnish particulars:

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2.3 Does the bidder or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest in the enterprise have any interest in any other related enterprise whether or not they are bidding for this contract?

<b>YES</b>	<b>NO</b>
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1 the power, by one person or a group of persons holding the majority of the equity of an enterprise, alternatively, the person/s having the deciding vote or power to influence or to direct the course and decisions of the enterprise.

2.3.1 If so, furnish particulars:

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### 3 DECLARATION

I, the undersigned, (name & Surname) \_\_\_\_\_ in  
submitting the accompanying quotation, do hereby make the following statements that I certify to  
be true and complete in every respect:

- 3.1 I have read and I understand the contents of this declaration;
- 3.2 I understand that the accompanying quotation will be disqualified if this declaration is found not to be true and complete in every respect;
- 3.3 The tenderer has arrived at the accompanying quotation independently from, and without consultation, communication, agreement or arrangement with any competitor. However, communication between partners in a joint venture or consortium<sup>2</sup> will not be construed as collusive bidding.
- 3.4 In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications, prices, including methods, factors or formulas used to calculate prices, market allocation, the intention or decision to submit or not to submit the bid, bidding with the intention not to win the bid and conditions or delivery particulars of the products or services to which this bid invitation relates.
- 3.4 The terms of the accompanying quotation have not been, and will not be, disclosed by the tenderer, directly or indirectly, to any competitor, prior to the date and time of the official quotation closing or of the awarding of the contract.
- 3.5 There have been no consultations, communications, agreements or arrangements made by the tenderer with any official of Ithala SOC (Ltd) in relation to this procurement process prior to and during the quotation process except to provide clarification on the quotation submitted where so required by the Ithala SOC (Ltd); and the tenderer was not involved in the drafting of the specifications or terms of reference for this quotation.
- 3.5 I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.
- 3.6 The tenderer or any of its directors is / are not listed on the National Treasury's Register of Tender Defaulters or the Database of Restricted Suppliers, have not been convicted by a court of law for fraud and corruption during the past five years, have not had any contract between the bidder and any organ of state being terminated during the past five years on account of failure to perform on or comply with the contract

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<sup>2</sup> Joint venture or Consortium means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract.

I CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 1, 2 and 3 ABOVE IS CORRECT.

I ACCEPT THAT ITHALA SOC (LTD) MAY REJECT THIS QUOTATION OR ACT AGAINST ME IN TERMS OF ITS SCM POLICY SHOULD THIS DECLARATION PROVE TO BE FALSE.

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**Signature**

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**Date**

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**Position**

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**Name of Bidder**

## **E. SBD 6.1 PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS 2022**

This preference form must form part of all tenders invited. It contains general information and serves as a claim form for preference points for specific goals.

**NB: BEFORE COMPLETING THIS FORM, TENDERERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF THE TENDER AND PREFERENTIAL PROCUREMENT REGULATIONS, 2022**

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### **1. GENERAL CONDITIONS**

- 1.1 The following preference point systems are applicable to invitations to tender:
  - the 80/20 system for requirements with a Rand value of up to R50 000 000 (all applicable taxes included); and
  - the 90/10 system for requirements with a Rand value above R50 000 000 (all applicable taxes included).
- 1.2 **To be completed by the organ of state**
  - a) The applicable preference point system for this tender is the **80/20** preference point system.
- 1.3 Points for this tender (even in the case of a tender for income-generating contracts) shall be awarded for:
  - (a) Price; and
  - (b) Specific Goals.

#### **1.4 To be completed by the organ of state:**

The maximum points for this tender are allocated as follows:

	<b>POINTS</b>
<b>PRICE</b>	80
<b>SPECIFIC GOALS</b>	20
<b>Total points for Price and SPECIFIC GOALS</b>	<b>100</b>

- 1.5 Failure on the part of a tenderer to submit proof or documentation required in terms of this tender to claim points for specific goals with the tender, will be interpreted to mean that preference points for specific goals are not claimed.
- 1.6 The organ of state reserves the right to require of a tenderer, either before a tender is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the organ of state.

## 2. DEFINITIONS

- (a) “**tender**” means a written offer in the form determined by an organ of state in response to an invitation to provide goods or services through price quotations, competitive tendering process or any other method envisaged in legislation;
- (b) “**price**” means an amount of money tendered for goods or services, and includes all applicable taxes less all unconditional discounts;
- (c) “**rand value**” means the total estimated value of a contract in Rand, calculated at the time of bid invitation, and includes all applicable taxes;
- (d) “**tender for income-generating contracts**” means a written offer in the form determined by an organ of state in response to an invitation for the origination of income-generating contracts through any method envisaged in legislation that will result in a legal agreement between the organ of state and a third party that produces revenue for the organ of state, and includes, but is not limited to, leasing and disposal of assets and concession contracts, excluding direct sales and disposal of assets through public auctions; and
- (e) “**the Act**” means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000).

## 3. FORMULAE FOR PROCUREMENT OF GOODS AND SERVICES

### 3.1. POINTS AWARDED FOR PRICE

#### 3.1.1 THE 80/20 OR 90/10 PREFERENCE POINT SYSTEMS

A maximum of 80 or 90 points is allocated for price on the following basis:

**80/20**

$$Ps = 80 \left( 1 - \frac{Pt - P_{min}}{P_{min}} \right)$$

Type equation here.

Where

Ps = Points scored for price of tender under consideration

Pt = Price of tender under consideration

Pmin = Price of lowest acceptable tender

### 3.2. FORMULAE FOR DISPOSAL OR LEASING OF STATE ASSETS AND INCOME GENERATING PROCUREMENT

#### 3.2.1. POINTS AWARDED FOR PRICE

A maximum of 80 points is allocated for price on the following basis:

**80/20**

$$Ps = 80 \left( 1 + \frac{Pt - P_{max}}{P_{max}} \right)$$

Type equation here.

Where

Ps = Points scored for price of tender under consideration  
Pt = Price of tender under consideration  
Pmax = Price of highest acceptable tender

#### 4. POINTS AWARDED FOR SPECIFIC GOALS

- 4.1. In terms of Regulation 4(2); 5(2); 6(2) and 7(2) of the Preferential Procurement Regulations, preference points must be awarded for specific goals stated in the tender. For the purposes of this tender the tenderer will be allocated points based on the goals stated in table 1 below as may be supported by proof/ documentation stated in the conditions of this tender:
- 4.2. In cases where organs of state intend to use Regulation 3(2) of the Regulations, which states that, if it is unclear whether the 80/20 or 90/10 preference point system applies, an organ of state must, in the tender documents, stipulate in the case of—
  - (a) an invitation for tender for income-generating contracts, that either the 80/20 or 90/10 preference point system will apply and that the highest acceptable tender will be used to determine the applicable preference point system; or
  - (b) any other invitation for tender, that either the 80/20 or 90/10 preference point system will apply and that the lowest acceptable tender will be used to determine the applicable preference point system,

then the organ of state must indicate the points allocated for specific goals for both the 90/10 and 80/20 preference point system.

**Table 1: Specific goals for the tender and points claimed are indicated per the table below.**

*(Note to organs of state: Where either the 90/10 or 80/20 preference point system is applicable, corresponding points must also be indicated as such.*

*Note to tenderers: The tenderer must indicate how they claim points for each preference point system.)*

The specific goals allocated points in terms of this tender	Number of points allocated (80/20 system) (To be completed by the organ of state)	Number of points claimed (80/20 system) (To be completed by the tenderer)
Black ownership	20	

## **DECLARATION WITH REGARD TO COMPANY/FIRM**

4.3. Name of company/firm.....

4.4. Company registration number: .....

4.5. **TYPE OF COMPANY/ FIRM**

- Partnership/Joint Venture / Consortium
- One-person business/sole proprietor
- Close corporation
- Public Company
- Personal Liability Company
- (Pty) Limited
- Non-Profit Company
- State Owned Company

[TICK APPLICABLE BOX]

4.6. I, the undersigned, who is duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the specific goals as advised in the tender, qualifies the company/ firm for the preference(s) shown and I acknowledge that:

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraphs 1.4 and 4.2, the contractor may be required to furnish documentary proof to the satisfaction of the organ of state that the claims are correct;
- iv) If the specific goals have been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the organ of state may, in addition to any other remedy it may have –
  - (a) disqualify the person from the tendering process;
  - (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
  - (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
  - (d) recommend that the tenderer or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and
  - (e) forward the matter for criminal prosecution, if deemed necessary

.....  
**SIGNATURE(S) OF TENDERER(S)**

**SURNAME AND NAME:** .....

**DATE:** .....

**ADDRESS:** .....

## **F. TERMS AND CONDITIONS FOR PURCHASE AND SALE OF GOODS ONCE OFF TRANSACTION**

(These Terms are to accompany the ToR/RFP/RFQ)

### **1. APPLICATION**

These Terms and Conditions of Sale ("the Terms") shall apply to the purchase of goods and ancillary services (collectively referred to as the "Goods") by the Service Provider ("Service Provider") and the Institution ("Institution"), each of which is identified in the accompanying quotation or proposal. These Terms, Product Specification, the Request for Proposal/Quotation, Service Provider's bid or quotation proposal, the Purchase Order as well as any other written Special Conditions of Contract signed by the Parties shall comprises the entire agreement between the parties (collectively, the "Agreement").

The Service Provider accepts these Terms by signing and returning these Terms to the Institution together with its quotation or proposal.

### **2. RELATIONSHIP OF PARTIES**

Nothing contained in these Terms shall be construed as establishing or implying any partnership or joint venture between the parties and nothing in these Terms shall be deemed to construe either of the parties as the agent of the other.

### **3. PRODUCT DESCRIPTION**

The product description shall be as provided for in the Specifications or the Service Provider's proposal as accepted by the Institution.

### **4. DELIVERY**

Delivery of the Goods shall take place and date as agreed to by the Parties. The order and delivery of such Goods as well as any further conditions of delivery shall be reduced to writing and shall form part of this Agreement. The Institution shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. Any damages, shortages, over deliveries and duplicated orders shall be reported to the Service Provider

### **5. INSPECTION AND REJECTION OF GOODS**

"Nonconforming Goods" means only the following: (i) the items delivered are different from those identified and specified in Institution's purchase order; or (ii) the labels or packaging of

the items incorrectly identifies them. The Institution shall refuse to accept delivery where it is immediately clear that the Goods delivered are Nonconforming Goods. Where it is not immediately clear that the Goods delivered are Nonconforming Goods, the Institution shall have 7 (seven) days following receipt of the said Goods within which to inspect them (the "Inspection Period"). The Goods will be deemed accepted at the end of the Inspection Period unless the Institution notifies Service Provider in writing of any Nonconforming Goods. The Service Provider shall replace the Nonconforming Goods within 14 (fourteen) days of receipt of notice or credit or refund the purchase price for the Nonconforming Goods, together with any reasonable expense that may have been incurred by the Institution. The Service Provider shall collect the Goods from the possession of the Institution within 14 (fourteen) days from the date of notification of the Nonconforming Goods. At Service Provider's request, Institution will dispose of the Nonconforming Goods or return the Nonconforming Goods to Service Provider at Service Provider's expense. The Service Provider's failure to comply with the provisions of this shall result in breach of this contract in terms of clause 14. Notwithstanding the foregoing, Service Provider will have no obligation under this section or otherwise with respect to any infringement claim based upon any: (i) misuse or modification of the Goods by Institution or its employees or agents, (ii) use of the Goods in combination with other materials, goods or services for which the Goods were not intended to be used, (iii) failure of Institution to implement any update provided by Service Provider that would have prevented the claim, (iv) Goods that Service Provider made to Institution's specifications or designs.

### **6. RISK**

All risks in the Goods shall pass to the Institution at delivery upon receipt and signing off of the Goods within reasonable time of signed receipt. The Service Provider shall collect all over deliveries and replace all damaged Goods as well as outstanding Goods or refund the Institution.

### **7. LIMITED WARRANTY**

The Service Provider warrants to Institution that the Goods will be free from defects in material and workmanship for a period of \_\_\_\_\_ following the date of delivery to the Delivery Location (the "Warranty Period") or the period of the manufacturers' warranty, whichever is longer. If prior to the expiration of the Warranty Period, the Institution informs Service Provider in writing of any breach of this limited warranty, Service Provider may repair or replace the

Goods that gave rise to the breach or refund the full amounts that Institution paid for the Goods. Service Provider does not warrant the Goods, or any repaired or replacement parts, against normal wear and tear or corrosion. The Institution shall provide the Service Provider with a reasonable opportunity to examine the Goods and the sales records and the Service Provider shall, in the absence of any unauthorized modification or repair of the Goods, including without limitation the removal or alteration of any serial numbers or warranty date decals replace, refund or repair the Goods. The Service Provider shall defend, indemnify, and hold harmless the Institution and its subsidiaries, affiliates, successors, and assigns and their respective directors, officers, shareholders, and employees from and against any Claims arising out of or occurring in connection with the negligence or willful misconduct of Service Provider or its employees or agents.

## **8. INFRINGEMENT**

The Service Provider shall defend, at its own expense, any action against the Institution brought by a third party to the extent that the action is based upon a claim that the Goods infringe on any patents or copyrights, or misappropriate any trade secrets, of a third party. The Service Provider shall pay those costs and damages finally awarded against the Institution on any actions that are specifically applicable to the claim or those costs and damages agreed to in a monetary settlement of the actions. The foregoing obligations are conditioned on Institution (i) notifying Service Provider promptly in writing of the action, (ii) making no admission of liability and giving Service Provider sole control of the defence thereof and any related claim, Service Provider shall, at its option and expense, either (i) procure for Institution the right to continue using the Goods, (ii) replace or modify the Goods so that they become noninfringing, or (iii) accept return of the Goods and refund Institution the amounts actually paid by Institution to Service Provider for the Goods.

## **9. PRICE AND PAYMENT**

The price payable to the Service Provider for the Goods shall be as described in the Purchase Order and shall be inclusive of all applicable taxes and cost. The price payable as referred to herein shall not be adjusted for any reason unless as agreed to in writing between the parties. The Institution shall pay all proper invoices received from the Service Provider and approved by both Parties, within 30 (thirty) calendar days of receipt and approval of invoices thereof. The Service Provider may charge interest on overdue invoices from the date when payment becomes due at the Prime

Rate compounded monthly from time to time, as used by the South African Reserve Bank.

## **10. FORCE MAJEURE**

The Parties shall not be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, breakdown of plant or machinery or shortage or unavailability of raw materials from a natural source of supply, and the Parties shall be entitled to a reasonable extension of their obligations. If the delay on the part of the Service Provider persists for a period of more than 60 (sixty) days, the Institution has the discretion to either (i) procure the Goods not readily available from the Service Provider from a 3rd party without terminating this Agreement and being liable to the Service Provider for the portion of the Goods as procured from the 3rd party or (ii) terminate this Agreement.

## **11. TERMINATION OF AGREEMENT**

This Agreement will terminate under the following circumstances: (i) in terms of the provisions of clause 14 or (ii) after delivery of the Goods provided that the Goods are not returned to the Service Provider in terms of the provisions of these Terms. In the event that the delivery of the Goods will be more than once, the Agreement shall terminate on the settlement negotiations, and (iii) cooperating and, at Service Provider's request and expense, assisting in the defence. If the Goods become, or in Service Provider's opinion are likely to become, the subject of an infringement Agreement shall only terminate after delivery of the correct Goods or replaced Goods on the date agreed to with the Institution. Should the Service Provider not deliver the correct Goods within the time agreed to by the Parties, the Service Provider shall be deemed to be in breach of this Agreement in terms of the provisions of clause 14. The Client will settle all undisputed outstanding invoices of the Service Provider within 30 (thirty) working days of the date of termination of Agreement. pursuant to this Agreement, to either enforce specific performance or terminate the Agreement (with a 14 (fourteen) day's written notice of termination) and/or claim damages.

## **12. SUB-CONTRACTING**

The Service Provider shall not subcontract its obligations in terms of this Agreement to any 3rd party without the prior written consent of the Institution.

## **13. CANCELLATION OF ORDER**

Cancellation or modifications of all or part of any order are subject to Service Provider's cancellation policy or as agreed to by the Parties in writing. The

Institution shall be liable for the Service Provider's direct damages incurred as a result of the cancellation or modification of an order that does not comply with the Service Provider's cancellation policy which shall be provided to the Institution in advance together with the Service Provider's bid proposal or quotation.

#### **14. BREACH**

Either Party shall be in breach of this Agreement if it fails to comply with any of its obligations in terms of this Agreement and having been given 14 (fourteen) calendar day's written notice to remedy such non-compliance. The Service Provider shall be in breach of this Agreement if it-; (a) fails to comply with the prescribed licensing requirements, and/or if it fails to comply with any date of the last delivery, provided the Goods are not returned to the Service Provider in terms of the provisions of this Agreement. In the event that the Goods are returned, the compromise or make such assignment with, its creditors; or (d) without the prior written consent to the Institution, undergoes a change in shareholding or members interest so that a new person owns the majority of its voting share capital or members interest; or Either Party shall, in any instance of breach, be entitled, in addition and without prejudice to any other right it may have in law.

#### **15. ENTIRE AGREEMENT**

These Terms together with its annexures (as contemplated in clause 1) constitutes the whole agreement between the Parties and no term or condition relating to the subject matter of this Agreement not incorporated in this Agreement shall be binding on any of the Parties. This Agreement supersedes all and any agreements between the Parties on the subject matter.

#### **16. CESSION AND ASSIGNMENT**

Neither Party shall cede in whole or in part, any of its obligations under the Agreement, except with the other Party's prior written consent. Neither Party shall assign, in whole or in part, any of its obligations under the Agreement.

#### **17. GOVERNING LAW**

This Agreement will be governed by, and construed in accordance with, the laws of the Republic of South Africa and all disputes, actions and other matters relating thereto will be determined in accordance with such laws.

Signed on \_\_\_\_\_ day of

202\_\_\_\_\_

By the Service Provider Representative:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Full Name and Surname

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Full Name and Surname of Witness